Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	CS Docket No. 96-133
Competition in the Market for the	)	
Delivery of Video Programming	)	

COMMENTS OF SBC COMMUNICATIONS INC.

In order to comply with its statutory responsibility to report annually to Congress on the status of competition in the market for the delivery of video programming,[1] the Commission released a Notice of Inquiry on June 13, 1996, inviting commenters to provide information relevant to the issues to be contained in the Commission's report. The areas concerning which the Commission specifically sought comment include impacts of the Telecommunications Act of 1996,[2] changes with respect to competitors in markets for delivery of video programming, technological issues, and industry and market structure issues. SBC Communications Inc. (SBC), on behalf of its subsidiaries Southwestern Bell Video Services, Inc. (SBVS) and Southwestern Bell Telephone Company (SWBT) hereby submits information in response to certain of the questions posed by the Commission in its NOI.

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[1]Section 628(g) of the Communications Act of 1934, as amended; 47 U.S.C. § 548(g).

[2]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

I. TELECOMMUNICATIONS ACT OF 1996

The Commission requested information concerning the initial effects of the passage of the Telecommunications Act of 1996.[3] Congress took major strides toward improving the ability of local exchange carriers (LECs) to introduce vigorous competition into the video marketplace by repealing the provision in the Communications Act that had prohibited LECs from providing video programming directly to subscribers in their telephone service areas (the "cable-telco cross-ownership ban).[4] While a number of federal trial courts and appellate courts had struck down the cable-telco cross-ownership ban on First Amendment grounds, the constitutionality of the ban was an issue pending at the U.S. Supreme Court at the time the Telecommunications Act was passed. The Supreme Court's decision would likely not have been rendered for a number of months, and in the interim LECs would have been reluctant to make significant investments in video programming distribution systems because of the risk of reversal. Congress' repeal of the ban was therefore a critical milestone in the immediate opening of the video marketplace to robust competition.

In the Telecommunications Act, Congress also eliminated in a number of circumstances the uniform rate structure requirement for cable operators that generally face effective competition with

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[3]NOI, ¶ 5.

[4]Section 302(b)(1) of the Telecommunications Act repealed Section 613(b), 47 U.S.C. §533(b). As the Commission pointed out in the NOI, the Telecommunications Act [Section 651(a) of the Communications Act; 47 U.S.C. § 571(a)] provided LECs with four options for entering the video marketplace: (1) provision of video programming through radio communications pursuant to Title III of the Communications Act; (2) provision of video transmission on a common carrier basis pursuant to Title II of the Communications Act; (3) provision of video programming through a cable system pursuant to Title VI of the Communications Act; and (4) provision of video programming through an open video system (OVS). Section 653 of the Communications Act; 47 U.S.C. § 573.

respect to services provided to multiple dwelling units (MDUs).[5] A cable operator that is subject generally to effective competition in a serving area thus will have the same pricing flexibility for MDUs as LECs and other new entrants into that market.

The Telecommunications Act also directed the Commission to promulgate rules to prohibit restrictions that impair a subscriber's ability to receive video programming services through devices designed for over-the-air reception of TV broadcast signals, multichannel multipoint distribution services (MMDS), or direct broadcast satellite (DBS) services.[6] This provision clarifies that the Commission has the authority to ensure that subscribers cannot be prevented by state and local laws or regulations from enjoying the benefits of these services.

Finally, the Telecommunications Act clarified that common carriers cannot be required to obtain Section 214 approval prior to establishing or operating a system for the delivery of video programming.[7] The 214 approval process was a significant barrier to common carrier entry into the delivery of video programming; elimination of the requirement encourages the rapid introduction of competition into the marketplace.

II. CHANGES IN MARKETS FOR DELIVERY OF VIDEO PROGRAMMING

The Commission requested information concerning the status of video programming distributors, and the changes in such status since last year's report.[8] SBVS has undertaken a limited

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[5]Section 301(b)(2) of the Telecommunications Act.

[6]Section 207 of the Telecommunications Act.

[7]Section 651(c) of the Telecommunications Act; 47 U.S.C. § 571(c).

[8]NOI, ¶ 14.

video market trial in Richardson, Texas,[9] in order to determine market response to the presence of a competitor to the incumbent cable operator, Tele-Communications Inc. (TCI). Prior to the commencement of SBVS' market trial, TCI stepped up efforts to improve customer service. Specifically, TCI went door-to-door in the trial area, offering customers free pay-per-view movie coupons and blank video cassette tapes. Those actions indicate that, even in a small area, the introduction of competition resulted in improved customer service, demonstrating the positive impact for subscribers of video competition.

The Commission also requested information concerning the likely effects that the new OVS option will have upon the video marketplace.[10] Congress fashioned the new OVS platform to offer independent video programming providers an alternative means to deliver their programming to subscribers besides the incumbent cable operator. Congress clearly stated, however, that the new platform is to be a Title VI system, not a Title II common carriage transport system.[11] While the rules for OVS are still being formulated, the Commission's Second Report and Order in CS Docket No. 96-46,[12] generally supported the deregulatory approach for OVS that Congress envisioned. However, the Commission determined in that order that the analog and digital portions of an OVS must be considered separately for the purposes of allocating system capacity among video

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[9]SBVS is providing the service under Title VI rules as the operator of a cable system. Since SBVS is subject to effective competition upon entering the market (since TCI is the incumbent operator), SBVS' rates are not regulated. SBVS negotiated an agreement with the local franchising authority to permit it to conduct the 18-month trial.

[10]NOI, ¶ 15(b).

[11]Section 653(c)(3) of the Communications Act; 47 U.S.C. § 573(c)(3).

[12][citation]

programming providers that are affiliated with the OVS operator and those that are unaffiliated, if the demand for carriage exceeds the capacity. Because the number of analog channels is very limited, because programmers affiliated with the OVS operator could be limited to one-third of the analog channel capacity plus PEG[13] channels and must-carry channels, and because unaffiliated programmers are permitted but not required to allow the OVS operator to package their programming with that of affiliated programmers, it could prove difficult for an OVS to assemble an attractive programming package in an analog-only environment. The OVS option therefore will not likely be viable until technology and market demand support an all digital environment.

The rules associated with cost allocation for OVS services are the subject of a pending rulemaking proceeding, CC Docket No. 96-112. The Notice of Proposed Rulemaking has tentatively concluded that common loop costs utilized in the provision of telephony and video services should be allocated to the regulated and nonregulated jurisdictions using a 50/50 allocation. Arbitrary allocations of that nature are significantly punitive, disincenting LEC new market entrants such as SBC from entering the video market using integrated broadband networks. The unnecessary burdensomeness of those loading techniques will stymie the growth of effective video competition. Additionally, the rules would not apply equally to incumbent cable providers, since cable companies choosing to upgrade their networks to enter the telephony market on an integrated are not subject to those mandated fixed allocation rules. The rules under consideration in that docket will thus create a competitive advantage for entrenched cable companies.

The Commission further requested information regarding the existence or potential for impediments that may deter entry or prevent increases in the video delivery market, including such

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[13]"PEG" stands for public, educational, and governmental channels.

factors as the strategic behavior of incumbent firms and legal, regulatory, and other impediments.[14] A significant impediment to competitive entry is access to programming. Without access to programming, new entrants such as SBVS would not be able to compete with incumbent cable operators in providing attractive programming packages to subscribers. SBVS' experience in its Richardson, Texas, trial bears out the importance of access to programming to competitive success. The trial has been successful largely because SBVS was able to offer a programming package comparable to that of the incumbent, thus providing subscribers with a choice of video providers. Because, however, current program access rules are limited in scope, exclusivity agreements such as the arrangement that NBC is reportedly offering with respect to MSNBC may soon become the norm, and new entrants into the marketplace could locked out of access to important programming.[15] SBC suggests that the Commission address program access issues in a further rulemaking proceeding as it proposed in its OVS Notice of Proposed Rulemaking, CS Docket No. 96-46, at paragraph 198.

SBC would also point out that the Texas Public Utility Regulatory Act of 1995 (PURA 1995) enacted provisions concerning delivery of video programming that are much more restrictive than the provisions contained in the Telecommunications Act of 1996. PURA 1995 prohibits LECs from providing video programming directly, but it permits separate corporate affiliates of LECs to provide video programming. PURA 1995 also requires that if the LEC offers any telecommunications equipment or services to an affiliated video programming provider, it must provide those services

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[14]NOI, ¶ 24.

[15]See, Attachment A, Cable World, July 15, 1996, p. 20. In that article, *The News About MSNBC*, Cable World stated that for 5 cents per month in addition to license fees, NBC "reportedly offered cable operators exclusive carriage in markets where they compete with wireless cable and telco video systems."

nondiscriminatorily to other video programming providers. The Telecommunications Act of 1996 does not impose those requirements.[16] State law provisions that are more restrictive than federal law may have the effect of deterring entry or preventing increases in competition in the video delivery market, in contravention of congressional intent.

III. CONCLUSION

The Telecommunications Act of 1996 encourages the development of robust competition in the video programming delivery marketplace, particularly with the way being cleared for LECs to

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[16]See, Section 271(g)(1) and Section 272(a)(2)(B)(i) of the Communications Act; 47 U.S.C. §§ 271(g)(1) and Section 272(a)(2)(B)(i); Section 651(b) of the Communications Act; 47 U.S.C. § 571(b).

provide such competition. SBC appreciates this opportunity to discuss its experience as a new video services entrant and to suggest ways that the Commission may continue to encourage free and fair competition in that marketplace.

Respectfully submitted,

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